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Of Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

**TINA PHILLIPS,**

Plaintiff,

v.

**CATHERINE GORTON and  
MULTNOMAH COUNTY,**

Defendants.

Civil Case No: 10-43 KI

DEFENDANTS' ANSWER AND  
AFFIRMATIVE DEFENSES TO  
PLAINTIFF'S COMPLAINT

Defendants, by and through their attorney, Carlo Calandriello, in response to Plaintiff's Complaint, admit, deny and allege as follows:

1.

Defendants admit the allegations contained in paragraphs 1 to 8.

2.

Defendants deny the allegations contained in the un-enumerated introductory paragraph, and paragraphs 13, 16 to 22, 25 to 29 and any other allegations not specifically admitted.

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3.

Defendants admit and deny the allegations of paragraphs as heretofore admitted and denied.

4.

With regards to paragraph 9, Defendants admit that Plaintiff's hands were handcuffed behind her back as she entered the Multnomah County Detention Center ("MCDC") on February 8, 2008. Except as specifically admitted, Defendants deny the allegations contained in paragraph 9 of Plaintiff's Complaint.

5.

With regards to paragraph 10, Defendants admit that the booking area of MCDC contains a "booking counter" with four partitions where inmates are searched for contraband and weapons, and begin the booking process at the facility. Except as specifically admitted, Defendants deny the allegations contained in paragraph 10 of Plaintiff's Complaint.

6.

With regards to paragraph 11, Defendants admit that physical force was used against Plaintiff while she was at the reception area of MCDC on February 8, 2008. Except as specifically admitted, Defendants deny the allegations contained in paragraph 11 of Plaintiff's Complaint.

7.

With regards to paragraph 12, Defendants admit that Plaintiff was searched by Sergeant Gorton and two other deputies while at the booking counter of MCDC. Except as specifically admitted, Defendants deny the allegations contained in paragraph 12 of Plaintiff's Complaint.

8.

With regards to paragraph 14, Defendants admit that Sergeant Gorton restrained Plaintiff by taking hold of her jacket and pants, and then escorted Plaintiff to a separation cell located across from the booking counter. Except as specifically admitted, Defendants deny the allegations contained in paragraph 14 of Plaintiff's Complaint.

9.

With regards to paragraph 15, Defendants admit that Plaintiff was taken to the ground while in the separation cell by Sergeant Gorton when Plaintiff failed to obey orders to get on her knees. Except as specifically admitted, Defendants deny the allegations contained in paragraph 15 of Plaintiff's Complaint.

10.

With regards to paragraph 23, Defendants admit that Sergeant Gorton was at all times an employee of Multnomah County and acting at all times within the course and scope of her employment. Except as specifically admitted, Defendants deny the allegations contained in paragraph 23 of Plaintiff's Complaint.

11.

With regards to paragraph 24, Defendants admit that they received a tort claim on June 30, 2008. Except as specifically admitted, Defendants deny the allegations contained in paragraph 24 of Plaintiff's Complaint.

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BY WAY OF FURTHER ANSWER AND AFFIRMATIVE DEFENSES, DEFENDANTS  
ALLEGE AS FOLLOWS:

12.

**FIRST AFFIRMATIVE DEFENSE**

**(Tort Claim Liability Limit)**

Plaintiff is barred from seeking damages in excess of those provided by ORS 30.270.

Plaintiff's state law claims are subject to the conditions, limitations and immunities  
contained in Oregon's Tort Claim Act, ORS 30.265 *et. seq.*

13.

**SECOND AFFIRMATIVE DEFENSE**

**(No Punitive Damages Available Against Public Body and its Officers)**

Plaintiff is barred from seeking punitive damages pursuant to ORS 30.270(2).

14.

**THIRD AFFIRMATIVE DEFENSE**

**(Qualified Immunity)**

Plaintiff's claims are barred because no reasonable corrections employee could have  
believed that, in light of clearly established law and the information the defendants possessed,  
their conduct was unlawful.

15.

**FOURTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate Damages)**

Plaintiff failed to mitigate damages.

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COMPLAINT

16.

**FIFTH AFFIRMATIVE DEFENSE**

**(Privilege – ORS 161.205(2))**

Defendants were privileged to use physical force to maintain order and discipline or as otherwise authorized by law.

17.

**SIXTH AFFIRMATIVE DEFENSE**

**(Justification – ORS 161.205(5))**

Defendants were justified in using physical force under the circumstances.

18.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Common Law - Privilege)**

Defendants were privileged to use force to maintain order and discipline in the jail.

19.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Common Law - Justification)**

Defendants were justified in using physical force under the circumstances.

Defendants reserve the right to add further affirmative defenses as discovery commences.

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WHEREFORE, having fully answered Plaintiff's Complaint, Defendants pray for a judgment in favor of Defendants against Plaintiff, dismissing Plaintiff's Complaint in its entirety and awarding Defendants their costs and disbursements incurred herein, and for such other and further relief as the court may deem appropriate.

Dated this 26th day of February, 2010.

Respectfully submitted,

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

**/s/ Carlo Calandriello**

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Carlo Calandriello, OSB No. 04254  
Assistant County Attorney  
Of Attorneys for Defendants